



PATENT APPLICATION

PATENT AND TRADEMARK OFFICE

BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of

Jacques HABATJOU

On Appeal from Group: 3752

Application No.: 10/830,121

Examiner: J. BOECKMANN

Filed: April 23, 2004

Docket No.: 119426

For: A DEVICE FOR SPRAYING A SUBSTANCE, INCLUDING A REMOVABLE  
RESERVOIR

APPEAL BRIEF TRANSMITTAL


Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Attached hereto is our Brief on Appeal in the above-identified application.

Also attached hereto is our Check No. 198067 in the amount of Five Hundred Ten Dollars (\$510.00) in payment of the Brief fee under 37 C.F.R. 41.20((b)(2)). In the event of any underpayment or overpayment, please debit or credit our Deposit Account No. 15-0461 as needed in order to effect proper filing of this Brief.

Respectfully submitted,

  
William P. Berridge  
Registration No. 30,024

James E. Golladay, II  
Registration No. 58,182

WPB:JEG/clf

Date: October 15, 2007

**OLIFF & BERRIDGE, PLC**  
**P.O. Box 320850**  
**Alexandria, Virginia 22320-4850**  
**Telephone: (703) 836-6400**

DEPOSIT ACCOUNT USE  
AUTHORIZATION  
Please grant any extension  
necessary for entry;  
Charge any fee due to our  
Deposit Account No. 15-0461

10/16/2007 JADD01 00000000 10830121

01 FC:1402

510.00 0P



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of

Jacques HABATJOU

Application No.: 10/830,121

Examiner: J. BOECKMANN

Filed: April 23, 2004

Docket No.: 119426

For: A DEVICE FOR SPRAYING A SUBSTANCE, INCLUDING A REMOVABLE  
RESERVOIR

BRIEF ON APPEAL

Appeal from Group 3752

Attorneys for Appellants  
OLIFF & BERRIDGE, PLC  
P.O. Box 19928  
Alexandria, Virginia 22320  
Telephone: (703) 836-6400



TABLE OF CONTENTS

	<u>Page</u>
I. REAL PARTY IN INTEREST .....	1
II. RELATED APPEALS AND INTERFERENCES .....	2
III. STATUS OF CLAIMS .....	3
IV. STATUS OF AMENDMENTS .....	4
V. SUMMARY OF CLAIMED SUBJECT MATTER .....	5
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL .....	7
VII. ARGUMENT .....	8
A. Claim 20 Is Not Anticipated By Schillig .....	8
B. Claims 1, 2, 5-7, 9-17, 43 and 44 Would Not Have Been Obvious Over Schillig In View Of Rookard, Jr. ....	10
C. Claims 3 and 4 Would Not Have Been Obvious Over Schillig in view of Rookard, Jr. and Coffee .....	14
D. Claims 21-26, 28, 33, 34, 36, 38, 40, 41, 45 and 46 Would Not Have Been Obvious Over Hauptmann .....	14
E. Claims 29-32 Would Not Have Been Obvious Over Hauptmann in View of Bara .....	17
VIII. CONCLUSION .....	18
APPENDIX A - CLAIMS APPENDIX .....	A-1
APPENDIX B - EVIDENCE APPENDIX .....	B-1
APPENDIX C - RELATED PROCEEDINGS APPENDIX .....	C-1

**I. REAL PARTY IN INTEREST**

The real party in interest for this appeal and the present application is L'OREAL, by way of an Assignment recorded in the U.S. Patent and Trademark Office at Reel 014856, Frame 0586.

**II. RELATED APPEALS AND INTERFERENCES**

There are no prior or pending appeals, interferences or judicial proceedings, known to Appellant, Appellant's representative, or the Assignee, that may be related to, or that will directly affect or be directly affected by or have a bearing upon, the Board's decision in the pending appeal.

**III. STATUS OF CLAIMS**

Claims 1-7, 9-17, 20-26, 28-34, 36, 38, 40, 41, and 43-46 are on appeal.

Claims 1-46 are pending.

No claims are allowed, and claims 8, 18, 19, 27, 35, 37, 39, and 42 are objected to only for being dependent from a rejected base claim, but are otherwise allowable.

Claims 1-7, 9-17, 20-26, 28-34, 36, 38, 40, 41 and 43-46 are rejected.

No claims are withdrawn from consideration.

No claims are canceled.

**IV. STATUS OF AMENDMENTS**

No Amendment After Final Rejection has been filed. The claims stand as they were in the Final Rejection.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is directed to a spray device (*e.g.*, Figs. 1 and 2, Ref. No. 1; para. [0068]) comprising a spray mechanism (*e.g.*, Figs. 1 and 2, Ref. No. 10; para. [0069]); and a reservoir (*e.g.*, Figs. 1, 2, 5 and 6, Ref. No. 20) containing a substance (*e.g.*, Fig. 5, Ref. No. P; para. [0101]) for spraying, arranged in such a manner as to be capable of being removably mounted (*e.g.*, Figs. 6 and 7, Ref. Nos. 75, 74; paras. [0068] and [0107]) on the device (*e.g.*, Figs. 1, 2, 5 and 6) so that the substance can be selectively dispensed by the spray mechanism (*e.g.*, paras. [0082] and [0083]), the reservoir comprising a substance outlet passage (*e.g.*, Fig. 7, Ref. No. 23b; para. [0098]); a closure member for closing said passage when the reservoir is not mounted on the device (*e.g.*, Fig. 5, Ref. Nos. 23, 25 and 26; para. [0098]), the spray mechanism and the closure member being arranged in such a manner that the closure member opens in response to the reservoir being mounted on the device (*e.g.*, Figs. 8 and 9; para. [0098]); at least a first partition (*e.g.*, Figs. 5 and 6, Ref. No. 27; paras. [0015] and [0101]); and first and second compartments (*e.g.*, Fig. 5, Ref. Nos. 20a and 20b; para. [0101]) capable of containing the substance (*e.g.*, Fig. 5, Ref. No. P; para. [0101]), the compartments being arranged to feed the spray mechanism with the substance and being disposed on either side of said first partition (*e.g.*, Figs. 5 and 6; para. [0105]), wherein the substance comprises a cosmetic or a care product (*e.g.*, paras. [0012], [0067] and [0068]).

Claim 20 is directed to a spray device (*e.g.*, Figs. 1 and 2, Ref. No. 1; para. [0068]) comprising a spray mechanism (*e.g.*, Figs. 1 and 2, Ref. No. 10; para. [0069]) comprising a housing (*e.g.*, Figs. 1 and 2, Ref. No. 11a; para. [0072]) for receiving a vector gas supply (*e.g.*, Fig. 2, Ref. No. 40; para. [0072]); and a reservoir (*e.g.*, Figs. 1, 2, 5 and 6, Ref. No. 20) containing a substance (*e.g.*, Fig. 5, Ref. No. P; para. [0101]) to be sprayed and arranged in such a manner as to be capable of being releasably mounted (*e.g.*, Figs. 6 and 7, Ref. Nos. 75, 74; paras. [0068] and [0107]) on the device so that the substance can be selectively dispensed



by the spray mechanism (*e.g.*, paras. [0082] and [0083]), the reservoir comprising a substance outlet passage (*e.g.*, Fig. 7, Ref. No. 23b; para. [0098]); and a closure member to close said passage when the reservoir is not mounted on the device (*e.g.*, Fig. 5, Ref. Nos. 23, 25 and 26; para. [0098]), the spray mechanism and the closure member being arranged in such a manner that the closure member opens in response to the reservoir being mounted on the device (*e.g.*, Figs. 8 and 9; para. [0098]).

Claim 21 is directed to a spray device (*e.g.*, Figs. 1 and 2, Ref. No. 1; para. [0068]) for spraying at least one substance (*e.g.*, Fig. 5, Ref. No. P; para. [0101]) contained in a reservoir (*e.g.*, Figs. 1, 2, 5 and 6, Ref. No. 20), the substance being taken from the reservoir by suction created at an outlet orifice of the reservoir (*e.g.*, Figs. 7 and 3, Ref. Nos. 23b and 33b; paras. [0083] and [0098]) by a stream of vector gas (*e.g.*, paras. [0026], [0082] and [0083]), the vector gas being stored in a pressurized receptacle (*e.g.*, Fig. 2, Ref. No. 40; para. [0072]), said device comprising an adjustment valve (*e.g.*, Figs. 2 and 3, Ref. Nos. 34g and 50; para. [0080]) for adjusting a flow rate of the sprayed substance (*e.g.* para. [0028]) and a control member (*e.g.*, Fig. 2, Ref. No. 12; para. [0071]) capable of being operated by a user to act both on a vector gas dispenser valve (*e.g.*, Fig. 2; para. [0082]) and on the adjustment valve (*e.g.*, Fig. 2; paras. [0083] and [0027]), the adjustment valve comprising a plunger (*e.g.*, Fig. 3, Ref. No. 50; para. [0076]) arranged to co-operate with an associated seat (*e.g.*, Fig. 3, Ref. No. 34g; para. [0080]) so that the flow rate of the sprayed substance varies with varying spacing between the seat and the plunger (*e.g.*, paras. [0041] and [0083]), the substance comprising a cosmetic or a care product (*e.g.*, paras. [0012], [0067] and [0068]).

Claims 2-7, 9-17, 22-26, 28-34, 36, 38, 40, 41, and 43-46 are argued as allowable at least for the dependence of these claims, directly or indirectly, on an allowable base claim with the features as set forth above.

**VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The following grounds of rejection are presented for review:

- 1) Claim 20 is rejected as anticipated under 35 U.S.C. §102(b) by DE 3 517 122 to Schillig;
- 2) Claims 1, 2, 5-7, 9-17, 43 and 44 are rejected as having been obvious under 35 U.S.C. §103(a) over Schillig in view of U.S. Patent No. 4,272,768 to Rookard Jr.;
- 3) Claims 3 and 4 are rejected as having been obvious under 35 U.S.C. §103(a) over Schillig in view of Rookard, Jr. and further in view of U.S. Patent No. 4,306,685 to Coffee;
- 4) Claims 21-26, 28, 33, 34, 36, 38, 40, 41, 45 and 46 are rejected as having been obvious under 35 U.S.C. §103(a) over EP 0 014 993 to Hauptmann;
- 5) Claims 29-32 are rejected as having been obvious under 35 U.S.C. §103(a) over Hauptmann in view of U.S. Patent Application Publication No. 2003/0108487 to Bara.

**VII. ARGUMENT**

Appellant respectfully requests review of the rejections set forth in the Final Rejection for the following reasons. First, the Final Rejection improperly rejects claim 20 by applying an improper construction of the plain meaning of the claim language and over-broadly construing the applied reference. Second, the subject matter of claim 1 would not have been obvious over the combination of applied references that are non-analogous art, and cannot reasonably be considered to have suggested all of the positively recited claim features. Third, the rejection of claim 21 unreasonably disregards positively recited claim features and assumes other features would have been obvious without proper foundation. Appellant requests that the Board withdraw the Final Rejection.

**A. Claim 20 Is Not Anticipated By Schillig**

The Final Rejection errs in rejecting claim 20 by applying an improper construction of the plain meaning of the claim language and over-broadly construing the applied reference for what it teaches.

The Office Action asserts that Schillig teaches all the features of claim 20. This assertion is incorrect for at least the following reasons.

Claim 20 recites, among other features, a spray device comprising a spray mechanism comprising a housing for receiving a vector gas supply. Exemplary depictions and descriptions of such features are provided, for example, in Figs. 1 and 2, Ref. Nos. 11a and 40, and para. [0072], of Appellant's specification, as filed.

Schillig teaches a paint receptacle 3 received in a paint spray device comprising a spray mechanism (*see* Fig. 1 of Schillig). The device of Schillig does not teach a corresponding housing for receiving a vector gas supply, as recited in claim 20.

In the Response to Arguments section, the Office Action alleges that "[w]hen the air (vector gas) supply is connected to the housing, the housing is receiving a vector gas supply,

and is therefore 'for receiving a vector gas supply.'" (April 19, 2007 Office Action, pg. 8).

However, this construction does not comport with the ordinary and customary meanings of the claim terms, does not accurately reflect any identified teaching in Schillig, and lacks foundation.

A "housing for receiving" is sufficiently clear to be understood, as used in the context of the pending claims, as the housing at least partially containing the vector gas supply (*see e.g.* paras. [0048], [0054], [0069], [0072]; Fig. 2, Ref. No. 11a). As described in Appellant's specification, providing a housing for receiving the vector gas supply may contribute to the benefits of making the device portable and cordless (*see* para. [0048]). Merely "connecting" does not satisfy such a feature because "connecting" includes joining or fastening that do not suggest any corresponding containing with respect to a specific component. For example, merely because "A is connected to B" gives no indication of how such a connection is established. On the contrary, if "A is received by B", one of ordinary skill in the art would understand this to mean that A is at least partially contained by B.

Moreover, the Office Action references no depiction or description of the allegedly corresponding "gun housing" in Schillig to support the conclusion that any air supply is connected thereto. Schillig is apparently focused primarily on the paint canister 3, and how that is connected to the spray gun 1 (Abstract; Figs. 1 and 2). The alleged gun housing of Schillig is not described with sufficient specificity to support a conclusion that the spray mechanism comprises a housing for receiving a vector gas supply.

In reviewing the anticipation standard, the Federal Circuit has stated "[t]o anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375 (Fed. Cir. 2001), *cert. denied*, 122 S. Ct. 1436 (2002) (emphasis added). *See also Sandisk Corp. v. Lexar Media, Inc.*, 91 F. Supp. 2d 1327, 1336 (N.D. Calif. 2000) (stating that

"[u]nless all the elements are found in a single piece of prior art in exactly the same situation and united the same way to perform the identical function, there is no anticipation.") and *Aero Industries Inc. v. John Donovan Enterprises-Florida Inc.*, 53 USPQ2d 1547, 1555 (S.D. Ind. 1999) (stating that "[n]ot only must a prior patent or publication contain all of the claimed elements of the patent claim being challenged, but they 'must be arranged as in the patented device' "). This standard for anticipation is also set forth in MPEP §2131, which states that "the identical invention must be shown in as much detail as is contained in the ... claim." Further, although the same terminology need not be used, "the elements must be arranged as required by the claim."

The Office Action fails to set forth such a specific showing with regard to the application of Schillig to a spray mechanism comprising a housing for receiving a vector gas supply, as recited in claim 20, and as would be understood by one of ordinary skill in the art.

In addition to the lack of a specific teaching of such a feature, it also cannot be said that connecting the alleged air supply to a "gun housing" would necessarily flow from the disclosure of Schillig. There is nothing in the limited configurations depicted Figs. 1 or 2 of Schillig that would require an air supply to be connected to a "gun housing." Rather, the air supply in Schillig may be connected to some other aspect of the spray mechanism, *e.g.* pressure lines, and not a "gun housing."

In view of the foregoing, the rejection of claim 20 necessarily fails at least because Schillig does not teach a spray mechanism comprising a housing with corresponding features arranged as in the claim, with as much detail as the claim.

**B. Claims 1, 2, 5-7, 9-17, 43 and 44 Would Not Have Been Obvious Over Schillig In View Of Rookard, Jr.**

The subject matter of claim 1 would not have been obvious over the combination of applied references that (1) are non-analogous art, (2) are not combinable in the manner

suggested, and (3) cannot reasonably be considered to have suggested all of the positively recited claim features.

The Office Action concedes that Schillig fails to teach a reservoir comprising a first partition; and first and second compartments capable of containing the substance, the compartments being arranged to feed the spray mechanism with the substance and being disposed on either side of said first partition. The Office Action relies on Rookard, Jr. to remedy these shortfalls in Schillig. Rookard, Jr. teaches including internal microwave reflective baffles in a microwave transparent survival canteen (Abstract).

It is unreasonable to assert that Rookard, Jr. constitutes analogous art with respect to the subject matter of the pending claims. With reference to MPEP §2141.01(a), the standard for finding a reference to be analogous prior art is that "[i]n order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992).

Canteens cannot reasonably be considered to be within the same field of Appellant's endeavor. In other words, the field of cosmetic applicators is obviously different from that of canteens. This is equally true with respect to the fields of paint sprayers and canteens.

The above-cited MPEP section goes on to quote other Federal Circuit precedent that finds that a reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his or her problem. A survival canteen with radar-reflective baffles cannot reasonably be considered to be matter that would have logically commended itself to the problems confronting Appellant in designing an improved spray mechanisms for applying substances comprising a cosmetic or a care product.

As such, Rookard Jr. is not analogous art, and is therefore not properly combined with Schillig.

Further, the alleged motivation to combine these references is not one that would have led one of ordinary skill in the art to combine the references in the manner suggested.

The Office Action asserts that it would have been obvious to one of ordinary skill in the art to add the partition of Rookard, Jr.'s canteen reservoir to the paint reservoir of Schillig "in order to prevent uncontrollable sloshing which results in a stable reservoir even when partially full, as taught by Rookard, Jr.." However, contrary to the suggestion in the Office Action, there is no evidence that the paint reservoir of Schillig suffers from "uncontrollable sloshing." Rather, this purported motivation is derived from Rookard, Jr., and deals with canteens worn, presumably, on the hip (*see* col. 1, lines 21-34 of Rookard, Jr.).

Rookard, Jr. discloses a survival canteen comprising internal microwave reflective baffles 6 which divide the canteen into various chambers (see Fig. 3 of Rookard, Jr.). The baffles are noted as providing a canteen which can be comfortably worn when partially full and which does not exhibit the undesirable dynamic characteristics caused by undamped sloshing of the liquid contents (see col. 2, lines 15-19 of Rookard, Jr.). The type of sloshing caused by wearing a canteen partially filled with water, or other drinkable liquids, does not obviously correspond with any problems suggested by a handheld paint spray gun and paint canister configuration as taught by Schillig.

Moreover, a primary purpose of the microwave reflective baffles in Rookard, Jr. is to enable the canteen to constitute a highly reflective radar target, so that the user may be located if in distress (*see e.g.* claim 1, col. 3, lines 10-23). This also does not obviously correspond to any problem attending the use of a paint spray gun.

Finally, the Office Action also concedes that Schillig fails to disclose wherein the substance comprises a cosmetic or a care product. The Office Action asserts that it would

have been obvious to one of ordinary skill in the art to "spray a cosmetic or care product [from] the spray device of [Schillig] as modified by Rookard, Jr., in order to improve a person's appearance." These assertions are not adequately supported by specific objective evidence in the prior art.

The assertion that it would have been obvious to one of ordinary skill in the art at the time of the invention to spray a cosmetic or care product from the spray device of Schillig as modified by Rookard, Jr. in order to improve a person's appearance, provides no hint of any motivation for one of ordinary skill in the art to combine the structural features of the paint sprayer of Schillig with the canteen of Rookard, Jr.. In other words, improving a person's appearance is not a result of combining the structures of Schillig and Rookard, Jr.. The attempt by the Office Action to find obvious the positively recited features of the pending claims by resorting to such "motivation" does not comport with U.S. Patent Office rules or the holding of the Federal Circuit in *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006) as endorsed by the U.S. Supreme Court in *K.S.R. v. Teleflex*, 550 U.S. \_\_\_, 2007 WL 1237837 (2007), that require the Examiner identify specific and objective evidence in prior art supporting an explicit analysis of obviousness with articulated reasoning and rational underpinning, that would have lead one of ordinary skill in the art to combine the references in the manner suggested.

In this regard, the Office Action does not identify any objective evidence in the prior art to support its assertion that the Schillig paint spray gun, which is described as used for spray painting objects such as a car door, would be appropriate and/or effective in applying cosmetics or care products to a human being in any way that would "improve a person's appearance." The unsupported assertion that one of ordinary skill in the art would have been motivated to spray a cosmetic or care product from a paint spray gun in order to improve a person's appearance simply does not render obvious such features.



In view of the foregoing, one of ordinary skill in the art would not have been motivated to modify the device of Schillig with a partition, such as the radar reflective partition of Rookard, Jr., at least because the references are not analogous art, are not combinable in the manner suggested, and cannot reasonably be considered to have suggested all of the positively recited claim features. As such, the rejection of claim 1, and the claims depending therefrom, necessarily fail.

**C. Claims 3 and 4 Would Not Have Been Obvious Over Schillig in view of Rookard, Jr. and Coffee**

Regarding claims 3 and 4, the Office Action relies on Coffee for a ball check valve. Coffee is not applied in a manner to overcome the application of Schillig and Rookard, Jr. to the subject matter of claim 1.

Accordingly, claims 3 and 4 are likewise allowable at least for the above reasons regarding the shortfalls of Schillig and Rookard, Jr. with respect to the subject matter of claim 1.

**D. Claims 21-26, 28, 33, 34, 36, 38, 40, 41, 45 and 46 Would Not Have Been Obvious Over Hauptmann**

The rejection of claim 21 improperly disregards positively recited claim features and assumes other features would have been obvious without proper foundation.

Claim 21 recites, a spray device for spraying at least one cosmetic substance contained in a reservoir, the substance being taken from the reservoir by suction created at an outlet orifice of the reservoir by a stream of vector gas, the vector gas being stored in a pressurized receptacle, said device comprising an adjustment valve for adjusting the flow rate of the sprayed substance and a control member capable of being operated by user to act both on a vector gas dispenser valve and on the adjustment valve, the adjustment valve comprising a plunger arranged to cooperate with an associated seat so that the flow rate of the sprayed

substance varies with varying spacing between the seat and the plunger, the substance comprising a cosmetic or a care product.

Hauptmann discloses a spray device for spraying at least one substance contained in a reservoir. Hauptmann does not teach or suggest that the substance is a cosmetic or a care product, as recited in claim 21. The Office Action asserts that it would have been obvious to one of ordinary skill in the art to "spray a cosmetic or care product [from] the spray device of Hauptmann in order to improve a person's appearance." This assertion is incorrect for at least the following reasons.

The Office Action does not identify any objective evidence in the prior art to support its assertion that the Hauptmann spray device would be appropriate and/or effective in applying cosmetics or care products to a human being in any way that would "improve a person's appearance." The unsupported assertion that one of ordinary skill in the art would have been motivated to spray a cosmetic or care product from such a spray device in order to improve a person's appearance simply does not render obvious such features.

Additionally, the Office Action disregards specific claim features that Hauptmann does not teach, nor can it reasonably be considered to have suggested. For example, in the embodiment depicted in Fig. 1 of Hauptmann, the substance is forced from its reservoir 3 by a gas coming from a reservoir 4 through a channel 23 issuing into the reservoir 3 of the substance. Thus, Hauptmann does not teach, nor can it reasonably be considered to have suggested, that suction is created at an outlet orifice of the reservoir, as recited in claim 21. The Office Action asserts that these features are given little or no patentable weight because they are allegedly recited as part of the preamble.

However, non-Jepson claim preambles have the import that the claims as a whole suggest for them. *Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808. (Fed. Cir. 2006) (stating that "no litmus test defines when a preamble limits claim scope"). The

preamble is given the effect of a limitation when the preamble recites a "necessary and defining" aspect of the invention, "recites essential structure or steps," helps to determine the scope of the patent claim, or is necessary to give "life, meaning and vitality" to the invention defined by the claim. *On Demand Machine Corp. v. Ingram Indus., Inc.*, 442 F.3d 1331, 1343 (Fed. Cir. 2006); and *NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282, 1305 (Fed. Cir. 2005). The feature of the substance being taken from the reservoir by suction created at an outlet orifice of the reservoir by a stream of vector gas at least helps to determine the scope of the patent claim, and, moreover, structurally distinguishes the claims over the applied reference.

For example, one of ordinary skill in the art would understand the different structural features of a device which relies on suction created by a stream of vector gas, as recited in claim 21, rather than pressure created by a vector gas, as in Hauptmann.

Further, contrary to the Office Action's implicit assertion, the Hauptmann device would not apparently be capable of performing the task of the substance being taken from the reservoir by suction created at an outlet orifice of the reservoir by a stream of vector gas.

To establish a *prima facie* case of obviousness, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Additionally, MPEP §2141.02 states, "[a]scertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art reference as a whole." Further, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983).

The analysis of the Office Action does not adequately address specific claim features, improperly ignores specific claim features, and fails to consider the features of claim 21 as a whole. Accordingly, and in view of the above-identified shortfalls in Hauptmann with respect to the subject matter of claim 21, the Office Action fails to establish a *prima facie* case of obviousness of claim 21 over Hauptmann.

**E. Claims 29-32 Would Not Have Been Obvious Over Hauptmann in View of Bara.**

Regarding claims 29-32, the Office Action relies on Bara for a nozzle configuration including two outlet nozzles for the vector gas and an outlet nozzle for the substance. Bara is not applied in a manner to overcome the application of Hauptmann to the subject matter of claim 21.

Accordingly, claims 29-32 are likewise allowable at least for the above reasons regarding the shortfalls of Hauptmann with respect to the subject matter of claim 21.

**VIII. CONCLUSION**

For all of the reasons discussed above, it is respectfully submitted that the rejections are in error and that claims 1-46 are in condition for allowance. For all of the above reasons, Appellants respectfully requests that this Honorable Board reverse the rejections of claims 1-7, 9-17, 20-26, 28-34, 36, 38, 40, 41, and 43-46 .

Respectfully submitted,



William P. Berridge  
Registration No. 30,024

James E. Golladay, II  
Registration No. 58,182

WPB:JEG

OLIFF & BERRIDGE, PLC  
P.O. Box 19928  
Alexandria, Virginia 22320  
Telephone: (703) 836-6400

Filed: October 15, 2007

**APPENDIX A - CLAIMS APPENDIX**

CLAIMS INVOLVED IN THE APPEAL:

1. A spray device comprising:  
a spray mechanism; and  
a reservoir containing a substance for spraying, arranged in such a manner as to be capable of being removably mounted on the device so that the substance can be selectively dispensed by the spray mechanism, the reservoir comprising:  
a substance outlet passage;  
a closure member for closing said passage when the reservoir is not mounted on the device, the spray mechanism and the closure member being arranged in such a manner that the closure member opens in response to the reservoir being mounted on the device;  
at least a first partition; and  
first and second compartments capable of containing the substance, the compartments being arranged to feed the spray mechanism with the substance and being disposed on either side of said first partition, wherein the substance comprises a cosmetic or a care product.
2. A device according to claim 1, wherein the passage opens out at one end thereof on either side of the first partition.
3. A device according to claim 1, wherein the closure member comprises a ball check valve.
4. A device according to claim 3, wherein the spray mechanism comprises a portion in relief arranged, when the reservoir is mounted on the device, to move the ball from a first position closing the passage to a second position opening the passage.

5. A device according to claim 1, wherein the reservoir comprises at least one second partition on one side of the first partition, the second partition being associated with the first compartment and defining therein two sub-compartments that are in communication with each other.

6. A device according to claim 5, wherein the reservoir comprises at least one third partition associated with the second compartment and defining therein two sub-compartments, the first partition being situated between the second and third partitions.

7. A device according to claim 1, wherein the reservoir comprises a base portion and a lid-forming portion fitted on the base portion.

9. A device according to claim 1, wherein the substance outlet passage is defined at least in part by an endpiece.

10. A device according to claim 9, wherein the endpiece projects from the reservoir.

11. A device according to claim 9, wherein the endpiece carries a sealing O-ring.

12. A device according to claim 1, wherein the reservoir is at least partially transparent.

13. A device according to claim 1, wherein the reservoir comprises a fastener arranged to co-operate by complementary shapes with the spray mechanism.

14. A device according to claim 1, wherein the substance is sprayed by suction created by a stream of vector gas.

15. A device according to claim 14, wherein the vector gas is stored in liquefied form in a pressurized receptacle.

16. A device according to claim 1, wherein the spray mechanism includes a control member arranged to act simultaneously both on a vector gas dispenser valve and on a valve for adjusting the flow rate of the sprayed substance.

17. A device according to claim 1, wherein the reservoir is generally elongate in shape, having a longitudinal axis substantially parallel to a direction in which spraying takes place.

20. A spray device comprising:

a spray mechanism comprising a housing for receiving a vector gas supply;

and

a reservoir containing a substance to be sprayed and arranged in such a manner as to be capable of being releasably mounted on the device so that the substance can be selectively dispensed by the spray mechanism, the reservoir comprising:

a substance outlet passage; and

a closure member to close said passage when the reservoir is not mounted on the device, the spray mechanism and the closure member being arranged in such a manner that the closure member opens in response to the reservoir being mounted on the device.

21. A spray device for spraying at least one substance contained in a reservoir, the substance being taken from the reservoir by suction created at an outlet orifice of the reservoir by a stream of vector gas, the vector gas being stored in a pressurized receptacle, said device comprising an adjustment valve for adjusting a flow rate of the sprayed substance and a control member capable of being operated by a user to act both on a vector gas dispenser valve and on the adjustment valve, the adjustment valve comprising a plunger arranged to co-operate with an associated seat so that the flow rate of the sprayed substance varies with varying spacing between the seat and the plunger, the substance comprising a cosmetic or a care product.

22. A device according to claim 21, wherein the control member comprises a pivoting lever.



23. A device according to claim 21, wherein the dispenser valve is secured to the pressurized receptacle.

24. A device according to claim 23, wherein the dispenser valve is triggered by tilting a control rod.

25. A device according to claim 21, wherein the seat is situated on a support piece for supporting at least one nozzle for spraying the substance.

26. A device according to claim 25, wherein the support piece is made of plastics material.

28. A device according to claim 21, wherein the substance reservoir is removable.

29. A device according to claim 21, further comprising two outlet nozzles for the vector gas and an outlet nozzle for the substance to be sprayed.

30. A device according to claim 25, wherein the at least one nozzle is made of metal.

31. A device according to claim 21, further comprising two vector gas outlet nozzles having axes that converge in a direction going away from the device.

32. A device according to claim 31, wherein the substance outlet orifice comprises an axis situated substantially in a same plane as the axes of the vector gas outlet nozzles.

33. A device according to claim 21, wherein the plunger is slidable in a direction substantially parallel to a direction along which the substance is sprayed.

34. A device according to claim 21, further comprising a housing for receiving the pressurized receptacle.

36. A device according to claim 21, further comprising a return spring for returning the plunger toward a rest position in which the plunger is pressed against the seat.

38. A device according to claim 21, further comprising an endpiece arranged to be engaged on a control rod of the dispenser valve, wherein the control member is arranged to be capable of pressing against said endpiece.

40. A device according to claim 21, wherein the device is generally elongate in shape and the control member comprises a presser face placed on a longitudinal side of the device to be pressed by a user.

41. A device according to claim 21, wherein the reservoir of substance and the pressurized receptacle are held together in a fixed manner without movement relative to one another in use.

43. A device according to claim 1, wherein the substance comprises a cosmetic.

44. A device according to claim 1, wherein the substance comprises a care product.

45. A device according to claim 21, wherein the substance comprises a cosmetic.

46. A device according to claim 21, wherein the substance comprises a care product.

**APPENDIX B - EVIDENCE APPENDIX**

NONE

**APPENDIX C - RELATED PROCEEDINGS APPENDIX**

NONE